

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT MWANZA**

REFERENCE COMMERCIAL CASE NO. 2 OF 2021

KOMARERA HERITAGE GOLD MINE CO. LTD..... 1st APPLICANT
MPONZIANO RAPHAEL MPONZI 2nd RESPONDENT
GHATI J. MPONZI 3rd RESPONDENT
DAVID MWITA MRONI 4th RESPONDENT
KIBWABWA NYAMHANGA 5th RESPONDENT

Versus

CHACHA SILAS 1st RESPONDENT
RAPHAEL IHANDE MAKI 2nd RESPONDENT
GIDEON MAGAGA 3rd RESPONDENT

Date of last order: 06/12/2021

Date of Ruling: 06/12/2021

RULING

MKEHA, J.

In the present application, the applicants are moving the court by way of Reference to be pleased to reverse and set aside the decision of the Taxing Master issued on 16/09/2021 in Taxation Cause No. 3 of 2021. The applicants are further asking the Court to proceed taxing the Bill of Costs in accordance with the law. The application is made under Order 7(1) and (2) of the Advocates Remuneration Order, 2015. Whereas Mr. Silas John

learned advocate represented the applicants, Mr. Heri Kayinga learned advocate represented the respondents during hearing of the application which was contested by the respondents through a counter affidavit deponed by their own advocate.

When the application was called for hearing, Mr. Silas John learned advocate for the applicants submitted that the Taxing Officer was wrong in taxing off the entire bill of costs. According to the learned advocate, the learned Taxing Officer read Orders 13, 46 and 48 of the Advocates Remuneration Order is isolation of Order 12 which enjoins taxation of costs considering what is necessary and proper for attainment of justice. According to the learned advocate the learned Taxing Officer completely ignored the consistency principle as per the decision in **VIP ENGINEERING LIMITED VS. CIT BANK TANZANIA LIMITED, CIVIL APPLICATION NO. 24 OF 2019.**

The learned advocate went on to submit that the Taxing Officer had no jurisdiction to tax off the entire bill of costs in circumstances whereby there was no dispute that advocates had been engaged by the applicants. Reference was made to the decision of this court at Arusha in **JULIUS MWARABU VS. NGAO GODWIN ROSERO, CIVIL REFERENCE NO. 4 OF 2020.** In view of the holding of the court in that case, which I subscribe to, the jurisdiction of the Taxing Officer is to tax the bill of costs and not to overrule the court which awarded costs.

Mr. Kayinga learned advocate submitted in reply that the learned advocate for the applicants had not challenged the Taxing Officer's finding that more than 93% of the bill contained exaggerations. In view of the learned advocate, the Taxing Officer had properly exercised his discretion. The rejoinder submissions was reiteration of what had been submitted in chief. It serves no useful purpose to reproduce the said submissions.

According to the learned Taxing Officer's decision the bill consisted of charges in different items namely, Instruction fees, Attendances, Disbursements, Drafting and Photocopying. The entire claimed sum was TZS 390,685,000/=. Instruction fees, which was contested for reasons of excessiveness consisted of TZS 375,000,000/=. In terms of the scales provided under the Advocates Remuneration Order, 2015 proper instruction fees ought to have been TZS 2,500,000/=. There was no certificate allowing the applicants to claim instruction fees for more than one advocate. Therefore, by claiming TZS 375,000,000/= for instruction fees, according to the Taxing Officer the bill was rendered excessively high more than 93% according to which the entire bill was taxed off in terms of Order 48 of the Advocates Remuneration Order.

It is worth noting that when the entire instruction fees is reduced TZS 15,685,000/= remains for other items, court fees inclusive. Under Order 48 of the Advocates Remuneration Order when more than one-sixth of the total amount of a bill of costs **exclusive of court fees** is disallowed, the party presenting the bill for taxation should not be entitled to the costs of

such taxation. Provided that , at the discretion of the taxing officer any instruction fees claimed, may be disregarded in the computation of the amount taxed off in the computation of the one - sixth.

The question is, did the Taxing Officer offend any principle of taxation as to warrant intervention of this court by way of reference. I respond in the affirmative. By excluding court fees in the computation of one – sixth under Order 48 it necessarily means that court fees are allowable on proof of payment of the same. But again, presence of other items apart from disbursements and instruction fees, from which costs are claimed, is one of the factors to be considered before opting to tax off the entire bill of costs. In this case, even after exclusion of the entire claimed sum under instruction fees, TZS 15,685,000/= on the other items remained without being taxed which is not the intention in enacting Order 48.

While I agree that there should be zero tolerance to exaggerations, I may add that, Order 48 ought to be sparingly brought into use in the course of taxing party to party costs. It is my holding that, in the circumstances of the present case principles governing taxation as provided under Order 12 ought to be brought into use. I am however far from agreeing with Mr. Silas John learned advocate that the consistency principle had been breached. As it was held **Tanzania Rent A Car Vs. Peter Kihumu, Civil Application No. 9 of 2021**, “the taxing officer among others is expected to determine the quantum of the said fees in accordance with the cost scales statutorily provided for together with other factors.....”


The learned advocate for the applicants has invited the court to proceed taxing the bill of costs. I decline to accept the invitation extended to this court. This is because , as it was decided in **WHITE VS. ALTRINCHAM URBAN DISTRICT COUNCIL (1936) ALL ER**, on questions of quantum the decision of the taxing officer is generally speaking final. Although I have held that there was a breach of principles of taxation, I consider it necessary that, the jurisdiction be again exercised by another Taxing Officer.

For the foregoing reasons I hereby set aside the Taxing Officer's decision in its totality. I direct fresh taxation of the bill of costs before another Taxing Officer of competent jurisdiction. No order is made as to costs.


C.P. MKEHA
JUDGE
06/12/2021

Dated at MWANZA this 6th day of DECEMBER, 2021.

Court: Ruling is delivered in the presence of the parties' advocates.


C.P. MKEHA
JUDGE
06/12/2021